IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

NORTH AMERICAN SPECIALTY)	
INSURANCE COMPANY, a corporation,)	
)	
Plaintiff,)	
)	
VS.)	CIVIL ACTION NO. 04-0382-P-C
)	
HR BUILDERS, LLC, a limited liability)	
corporation; JIM WALLEY, an individual over)	
the age of 19; MICHAEL WALLEY, an)	
individual; LINDER THOMAS; and)	
CATHERINE THOMAS,)	
)	
Defendants.)	

ORDER in re SETTLEMENT

On January 5, 2005, this court entered a Stay Order in this declaratory judgment action brought by plaintiff, North American Specialty Insurance Company, against defendants, HR Builders, L.L.C., Jim Walley and Michael Walley, and Linder and Catherine Thomas (the "Thomases") (doc.29). The Stay is pursuant to Wilton v. Seven Falls Co., 515 U.S. 277 (1995), pending resolution of an underlying tort action pending in the Circuit Court of Baldwin County, Alabama. *Linder Thomas and Catherine Thomas v. HR Builders, L.L.C., Michael Walley, and Jim Walley, CV-03-0726* (doc.1-Ex.A). Id.

Currently pending before this court is plaintiff's "Notice of Settlement" (doc.35). Plaintiff states that the underlying tort action has been resolved and this declaratory judgment action is moot. <u>Id</u>. This

court construes the "Notice" as a Motion under Rule 41of the Federal Rules of Civil Procedure.

Pursuant to Rule 41(a)(1), plaintiff may voluntarily dismiss an action "without order of court (I) by filing a notice of dismissal at any time *before service by the adverse party of an answer*..., or (ii) by filing a stipulation of dismissal *signed by all parties who have appeared* in the action." Fed.R.Civ.P. 41(a)(1) (emphasis added).

This action was filed on June 14, 2004 (doc.1), and service of process was issued on the named defendants (doc.2). Returns of service on the Thomases were filed on July 1, 2005 (doc.3), and their responsive pleading, i.e., their Answer, was filed on July 8, 2004 (doc.4).

On October 5, 2004, this court issued a Show Cause Order regarding service of process on the other named defendants, HR Builders, LLC, Jim Walley, and Michael Walley (doc.5). Plaintiff responded and was granted an additional thirty days within which to proffer proof of service (doc.8). Returns of service for HR Builders, Jim Walley, and Michael Walley were filed on October 27, 2004 (docs.10-12), and their responsive pleading, their Answer, was filed on November 15, 2004 (doc.15). Thus, all defendants have appeared. Therefore, to voluntarily dismiss this action under Rule 41(a)(1), a stipulation is required.

Plaintiff's Motion to voluntarily dismiss this action (doc.35) does not comply with Rule 41(a)(1). Further, plaintiff does not state whether the requested dismissal is with or without prejudice or how costs are to be allocated.

Accordingly, it is ORDERED that plaintiff's Motion to voluntarily dismiss (doc.35) be and is hereby DENIED without prejudice to be refiled in compliance with Rule 41(a)(1). Upon full compliance with the Rule, the Stay will be lifted and this action will be dismissed.

DONE th	ic 17th	day	f Nover	nhar	2005
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S/Virgil Pi	ittman			
SENIOR I	INITED	STATES	DISTRIC	T JUDGE